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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 AIMEE VEDEN a/k/a LORENZEN,

9 Plaintiff,

v.

10 HSBC BANK USA NATIONAL  
11 ASSOCIATION,

12 Defendant.

CASE NO. C19-5434 BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS

13 This matter comes before the Court on Defendant HSBC Bank USA National  
14 Association, as Trustee for the holders of the Merrill Lynch Investors Inc., Mortgage  
15 Pass-Through Certificates, Mana Series 2007-OAR5's ("HSBC") motion to dismiss.  
16 Dkt. 13. The Court has considered the pleadings filed in support of and in opposition to  
17 the motion and the remainder of the file and hereby denies the motion for the reasons  
18 stated herein.

19 **I. PROCEDURAL AND FACTUAL BACKGROUND**

20 On May 17, 2019, Plaintiff Amiee Veden a/k/a Lorenzen ("Plaintiff") filed a  
21 complaint against HSBC asserting claims for quiet title, unjust enrichment, and  
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1 declaratory judgment. Dkt. 1. Plaintiff's claims are based on the alleged forgery of her  
2 and her consignor, Jason Lorenzen's ("Mr. Lorenzen") signatures on a Deed of Trust  
3 ("DOT") and Note securing Plaintiff's real property at 21315 Orting Kapowsin Highway  
4 East, Graham, Washington, 98338 (the "Property"). *Id.* ¶¶ 21–29.

5 In June 2007, Mr. Lorenzen signed the Note for a \$238,400.00 loan from FirstLine  
6 Mortgage, Inc. ("FirstLine"). Dkt. 4-2 at 12. The DOT, however, was signed by both  
7 Mr. Lorenzen and Plaintiff. *Id.* at 11. It appears undisputed at this point that the DOT  
8 and Note were transferred from FirstLine to HSBC.

9 In August 2014, Plaintiff filed a bankruptcy petition in this District's Bankruptcy  
10 Court. Dkt. 14-2.<sup>1</sup> The ultimate outcome of this petition is unclear.

11 In November 2016, a Notice of Trustee's Sale for the Property was recorded in  
12 Pierce County, Washington records. Dkt. 1, ¶ 15. The sale was rescinded in June 2017.  
13 *Id.* In October 2017, Mr. Lorenzen quitclaimed his interest in the Property to Plaintiff.  
14 *Id.*, ¶ 18.

15 On February 6, 2018, Plaintiff filed a complaint in this Court against HSBC and  
16 others seeking declaratory judgment and asserting claims for slander of title and  
17 intentional infliction of emotional distress. *Lorenzen v. Mortgage Electronic Registration*  
18 *Systems, Inc.*, C18-5094BHS. In response to a motion to dismiss, Plaintiff voluntarily  
19 dismissed her complaint. *Id.*, Dkt. 14.

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22 <sup>1</sup> HSBC requests that the Court take judicial notice of the petition. Dkt. 13 at 4. The Court will take judicial notice of this public filing.

1 On May 17, 2019, Plaintiff filed the instant complaint. Dkt. 1. On July 31, 2019,  
2 HSBC filed a motion to dismiss. Dkt. 13. Plaintiff did not respond. On August 30,  
3 2019, HSBC replied. Dkt. 16.

## 4 II. DISCUSSION

5 HSBC moves to dismiss based on judicial estoppel and failure to join a necessary  
6 party. As an initial matter, the Court agrees with HSBC that Plaintiff's failure to respond  
7 to HSBC's motion will be taken as an admission that the motion has merit. The Court,  
8 however, concludes that HSBC has failed to establish that Plaintiff's complaint should be  
9 dismissed with prejudice at this point of the proceeding.

10 Regarding judicial estoppel, the Court should consider at least three factors as  
11 follows: (1) whether the party's current position is clearly inconsistent with its prior  
12 position; (2) whether the party succeeded in persuading a court to accept its prior  
13 position; and (3) whether the party seeking to assert an inconsistent position would derive  
14 an unfair advantage or impose an unfair detriment on the opposing party if not estopped.  
15 *Quin v. Cnty. Of Kauai Dep't of Transp.*, 733 F.3d 267, 270-71 (9th Cir. 2013).

16 In this case, HSBC concentrates on the first factor but fails to submit any evidence  
17 to establish the second or third factors. While the Court agrees with HSBC that Plaintiff  
18 has taken inconsistent positions in admitting the debt in her bankruptcy and previous case  
19 with this Court, that inconsistent position alone does not warrant the enforcement of  
20 judicial estoppel. The record is devoid of any indication that Plaintiff either succeeded in  
21 persuading a court to accept her prior position or would derive an unfair advantage in  
22 now asserting that the signatures on the initial documents were forged. Thus, the Court

concludes that HSBC has failed to establish that judicial estoppel is warranted at this time and denies HSBC's motion on this issue.

Regarding failure to join an indispensable party, HSBC has failed to establish that Mr. Lorenzen is indispensable. While it is true that Mr. Lorenzen will most likely be a necessary witness in this matter, it is not entirely clear that he is a necessary party. HSBC argues in conclusory fashion that (1) the Court is unable to afford complete relief among the parties without Mr. Lorenzen's appearance and (2) HSBC may be exposed to double or inconsistent obligations without Mr. Lorenzen's appearance. Dkt. 13 at 12. HSBC, however, fails to clearly articulate how either of these concerns are likely. Thus, the Court denies HSBC's motion on this issue.

### III. ORDER

Therefore, it is hereby **ORDERED** that HSBC motion to dismiss, Dkt. 13, is **DENIED** without prejudice.

Dated this 13th day of September, 2019.

  
BENJAMIN H. SETTLE  
United States District Judge